United Nations A/HRC/28/NGO/65

General Assembly

Distr.: General
20 February 2015

English only

Human Rights Council
Twenty-eighth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-03116 (E)
1503116

Please recycle

Australia's treatment of Asylum seekers

Australia is considered by the UNHCR as the eighth largest recipient of asylum seekers in the industrialised world. Asylum seekers from Afghanistan, Sri Lanka, Iraq and Iran or Myanmar pay large amounts of money to smugglers in order to escape persecution and human rights abuses and to the Australian coasts.

The journey of the asylum seekers is extremely dangerous not only because Australia is geographically far away from the original country but also because the tiny boats are not suitable for such a long journey. However, the need to flee abuses is so urgent that the migrants are boarding anyway, reassured by the fact that Australia is one of the few states next to South East Asia that have ratified the Convention relating the status of Refugees.

Unfortunately, asylum seekers do not know that Australia has one of the strictest asylum policies and immigration detention regimes in the world. The immigration law differentiates between two types of asylum seekers: those arriving in Australia with a valid Visa and then applying for protection and those arriving in Australia by boat without a valid Visa.

The first category of asylum seekers have their claims directly assessed by the Department of Immigration and Border Protection which decide whatever a person is a refugee according to the criteria set out in the Refugee Convention, meet the 'complementary protection' criteria or is not eligible for protection.

The second category of asylum seekers, the one arriving by boat and without a valid Visa, is subjected to the "third country regime" and transferred to a third country unless the Minister for Immigration exercises his/her discretion to exempt them from transfer.

Under this system, asylum seekers who have arrived by boat must be transferred to a third country as soon as is reasonably practicable unless the Minister for Immigration and Border Protection exercises his discretion to exempt them from transfer.

That means, that if the unauthorised asylum seekers are allowed by the Minister to remain in Australia, their claims will be processed under the Australian law and if transferred to a third country their claims for protection will be processed under that country's laws.

According to the amendments to the Australian Migration Act 1958, Papua New Guinea (PNG) and Nauru have been designated as 'regional processing countries'.

Furthermore, in 2013, the Australian Government and the Papua New Guinea government have agreed on a new policy for unauthorised asylum seekers, In a Regional Resettlement Arrangement (RRA) and in a new Memorandum of Understanding (MOU) the two states have established that asylum seekers arriving unauthorised by boat to Australia will be transferred to Papua New Guinea and processed under the Papua New Guinea law, and if found to be refugees, in Papua New Guinea, rather than in Australia. In addition, if the asylum seekers are not eligible for protection, they will be returned to their country of origin or a country where they have a right of residence. A similar agreement has been signed also with Nauru.

Through the "third country regime" the Australian government is infringing on international laws obligations dictated by the law of treaties but also by the customary law, discriminating asylum seekers on their mode of arrival and breaching the non-refoulement principle which as customary law's principle cannot be delegated to third countries.

The arrival mode is a factor that depends strongly on the discrimination and persecution degree, not all the future asylum seekers are able to apply for a Visa; many of them have no documents or are even stateless. On the website of the Australian Customs and Border Protection Service, there is a flyer which is inciting the asylum seekers to not believe human smugglers because "NO WAY you will not make Australia home". Leaving aside the dubious taste of

the flyer - among many language translations that have been made available there is also the Rohingya language - ironically, the Australian government does not seem to be aware or wilfully ignores that the Rohingya are a stateless minority in Myanmar and as such they do no not possess any documents and apart leaving in internally displaced camps. They are undocumented and also subject to severe restrictions on freedom of movement. This in addition to the physical impossibility to reach an embassy makes them not eligible for a visa.

The Australian government refuses also to take notice of human rights violations and the dire living situation of the detention centres where the asylum seekers are sent to.

Alarming are recent reports and testimonies documenting about sexual, physical and psychological abuses against children and women detained at Nauru and Manus island detention centres.

A former nurse who worked in the Australian-run detention centre on Nauru has described the condition of the camp as shocking and as "inadvertent torture". Citing just some examples she reported about a three-year-old boy that had been put on Risperidone, which is an anti-psychotic and the dramatic situation of many women who were wetting their bed at night because they were too frightened to go to the toilet blocks controlled by male guards.Physical and mental abuse are a daily occurrence and in addition to a hunger strike initiated by asylum seekers against the separation of families in different centers and the no-limit detention there is an increasing number of suicide attempts.

The situation of asylum seekers in Manus' island in Papua New Guinea is not better, rights groups reported poor hygiene conditions, violence, unrelenting heat and lack of facilities. Two Iranian men, Reza Barati and Hamid Khazaei have died during their detention in the centre. Mr. Barati has been beaten to death by a mob comprising camps guards and Papua New Guinea local residents who had broken into the centre while Mr. Khazaei has been declared brain dead following a severe infection of a cut foot.

In addition to the restrictive immigration policy and to the plight of the third countries regime's detention centres, the Abbott government has introduced the Operation Sovereign Borders, an instrument which is aimed at stopping human trafficking but that in the practice is violating the non-refoulement Principle. Indeed, the Operation Sovereign Borders put the military in control of asylum operations, by intercepting any vessel that is seeking to illegally enter Australia and safely removing it beyond Australian waters. Removing boats beyond Australian waters means sending back the asylum seekers to countries were they could face persecution. Under this policy the military has returned without any verification two boats full of asylum seekers from Sri Lanka.

Therefore Society for threatened Peoples urges the Human Rights Council to call on the Government of Australia to:

- Revise the Asylum seekers policy
- Respect international law obligation and customary law in particular the non-refoulment Principle and the non-discrimination Principle
- Respect international standards for asylum seekers dictated by the international treaties law
- End the "third country regime"
- End immediately the "Operation Sovereign Borders" and respect the non-refoulement obligation
- Genuine investigate the gross human rights violation in Nauru and Papua New Guinea detention centres
- Provide protection to particularly weak groups such as women, pregnant women, children and unaccompanied children